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EXAMINER	
CHOKSHI, PINKAL R	

ART UNIT	PAPER NUMBER
2425	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/577,267	HAWKINS ET AL.	
	Examiner	Art Unit	
	Pinkal R. Chokshi	2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *04/28/2011*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04/28/2011 have been fully considered but they are not persuasive. Regarding claim 21, Applicant alleges that Gerba does not disclose that in response to receiving said updated program guide, determining if a banner advertising a future program on said channel is currently displayed while said channel is tuned. Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The claim was rejected using the combination of Knudson, Gerba, and Mountain, where Knudson discloses (col.1, lines 33-35; col.8, line 39-col.9, line 37) that the receiving device receives real time data (updated program guide) from the data source, which is used to display real time data on sports scores with the EPG data, where the guide continually display up-to-the-minute scores with the program listings in real time as represented in Fig. 3. However, Knudson does not explicitly teach that the determination is made whether the banner is currently displayed. Gerba discloses (¶0187) that the determination is made whether the banner is displayed as represented in Fig. 32A (element 952). Therefore, it renders obviousness of the claim and moots Applicant's argument.

The rejections relied on the references for all the teachings expressed in the text of the references and/or one of ordinary skill in the art would have reasonably

understood from the texts. Only specific portions of the texts have been pointed out to emphasize certain aspects of the prior art, however, each reference as a whole should be reviewed in responding to the rejection.

With regard to the dependent claims, the respective rejections are maintained as Applicant has only argued that the secondary reference does not cure the deficiencies of Knudson, Gerba, and Mountain, nevertheless it is the Examiner's contention that Knudson, Gerba, and Mountain do not contain any deficiencies. See the rejection below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 28 and 29** are stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The means for determining, requesting are done by a CPU/processor and therefore a corresponding algorithm must be disclosed. The rejection is maintained.

5. Claim element "means for determining", "means for requesting" are a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. In the specification, several paragraphs mention determining and

requesting. However, the specification does not teach how it is being done or there is no corresponding algorithm disclosed for these functions.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. **Claims 21, 23-25, 27, 28, 30-32, 35, 37, and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,536,041 to Knudson et al (hereafter referenced as Knudson) in view of US PG Pub 2003/0083533 to Gerba (hereafter referenced as Gerba) and US PG Pub 2002/0194599 to Mountain (hereafter referenced as Mountain).

Regarding **claim 21,** "a method for operating a television apparatus" reads on the method that provides program guide to the user television equipment (abstract) disclosed by Knudson and represented in Fig. 1.

As to "the method comprising steps of: tuning a channel" Knudson discloses (col.9, lines 39-42) that the user tunes to a channel.

As to "receiving an updated program guide from a broadcaster while said channel is tuned, wherein said updated program guide is provided from said broadcaster without being requested by said television apparatus" Knudson discloses (col.2, lines 44-56; col.13, lines 17-48) that the database at television equipment receives program listing data, where when live event data and updated program listings information is received in real-time at television equipment from the distribution facility; the television equipment uses the

updated program listing data to update the database and displays the updated programming guide data as represented in Figs. 11 and 12.

As to "in response to receiving said updated program guide, determining if a banner advertising a future program on said channel is currently displayed while said channel is tuned" Knudson discloses (col.1, lines 33-35; col.8, line 39-col.9, line 37) that the receiving device receives real time data (updated program guide) from the data source, which is used to display real time data on sports scores with the EPG data, where the guide continually display up-to-the-minute scores with the program listings in real time as represented in Fig. 3.

Knudson meets all the limitations of the claim except "determining if a banner advertising a future program on said channel is currently displayed while said channel is tuned." However, Gerba discloses (¶0187) that the determination is made whether the banner is displayed as represented in Fig. 32A (element 952).

As to "in response to determining that said banner is currently displayed while said channel is tuned, performing a first function while said channel is tuned" Gerba discloses (¶0187) that the information in the banner is updated if the banner is already displayed as represented in Fig. 32A (element 954).

As to "in response to determining that said banner is not currently displayed while said channel is tuned, performing a second function different from said first function while said channel is tuned" Gerba discloses (¶0187) that if the banner is not displayed, then the device displays banner on the screen as

represented in Fig. 32A (element 956). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson's system by displaying and updating banner as taught by Gerba in order to provide with the latest information on the programming.

Combination of Knudson and Gerba meets all the limitations of the claim except "banner advertising a future program." However, Mountain discloses (¶0023) that based on the EPG data received, the receiver generates a small display on TV indicating start of next program with program information as represented in Figs. 2A-2C. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson and Gerba's systems by displaying banner advertising future program as taught by Mountain so the viewer can know the future programming information without having to find out manually.

Regarding **claim 23,** "the method wherein said banner includes at least one of: a title of said future program, a starting time of said future program, and a duration of said future program" Mountain discloses (¶0023) that the displaying information provided includes the program title, start time, channel number, etc. as represented in Figs. 2A-2C. In addition, same motivation is used as rejection to claim 21.

Regarding **claim 24,** "the method wherein said future program is a next

program on a currently tuned channel" Mountain discloses (¶0013) that the display generated on the TV includes information relating to program next to be shown on one channel. In addition, same motivation is used as rejection to claim 21.

Regarding **claim 25,** "the method wherein said first function includes updating said currently displayed banner with new information based on said updated program guide" Gerba discloses (¶0179, ¶0187) that the banner information is updated with the information using the IPG data. In addition, same motivation is used as rejection to claim 21.

Regarding **claim 27,** "the method of claim 21, wherein said second function includes enabling display of said banner based on said updated program guide" Gerba discloses (¶0179, ¶0187) that if the banner information is not displayed, then the banner information is displaying on the screen using the IPG data. In addition, same motivation is used as rejection to claim 21.

Regarding **claim 28,** "a television apparatus" reads on the method that provides program guide to the user television equipment (abstract) disclosed by Knudson and represented in Fig. 1.

As to "comprising: means for tuning a channel" Knudson discloses (col.9, lines 39-42) that the user tunes to a channel.

As to "means for receiving an updated program guide from a broadcaster while said channel is tuned, wherein said updated program guide is provided from said broadcaster without being requested by said television apparatus" Knudson discloses (col.2, lines 44-56; col.13, lines 17-48) that the database at television equipment receives program listing data, where when live event data and updated program listings information is received in real-time at television equipment from the distribution facility; the television equipment uses the updated program listing data to update the database and displays the updated programming guide data as represented in Figs. 11 and 12.

As to "means for determining if a banner advertising a future program on said channel is currently displayed while said channel is tuned in response to receiving said updated program guide" Knudson discloses (col.1, lines 33-35; col.8, line 39-col.9, line 37) that the receiving device receives real time data (updated program guide) from the data source, which is used to display real time data on sports scores with the EPG data, where the guide continually display up-to-the-minute scores with the program listings in real time as represented in Fig. 3.

Knudson meets all the limitations of the claim except "means for determining if a banner advertising a future program on said channel is currently displayed while said channel is tuned." However, Gerba discloses (¶0187) that the determination is made whether the banner is displayed as represented in Fig. 32A (element 952).

As to "wherein: if said determining means determines that said banner is currently displayed while said channel is tuned, a first function is performed while said channel is tuned" Gerba discloses (¶0187) that the information in the banner is updated if the banner is already displayed as represented in Fig. 32A (element 954).

As to "if said determining means determines that said banner is not currently displayed while said channel is tuned, a second function different from said first function is performed while said channel is tuned" Gerba discloses (¶0187) that if the banner is not displayed, then the device displays banner on the screen as represented in Fig. 32A (element 956). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson's system by displaying and updating banner as taught by Gerba in order to provide with the latest information on the programming.

Combination of Knudson and Gerba meets all the limitations of the claim except "banner advertising a future program." However, Mountain discloses (¶0023) that based on the EPG data received, the receiver generates a small display on TV indicating start of next program with program information as represented in Figs. 2A-2C. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson and Gerba's systems by displaying banner advertising future program as taught by Mountain so the viewer can know the future programming information without having to find out manually.

Regarding **claim 30,** "the television apparatus wherein said banner includes at least one of: a title of said future program, a starting time of said future program, and a duration of said future program" Mountain discloses (¶0023) that the displaying information provided includes the program title, start time, channel number, etc. as represented in Figs. 2A-2C. In addition, same motivation is used as rejection to claim 28.

Regarding **claim 31,** "the television apparatus wherein said future program is a next program on said channel" Mountain discloses (¶0013) that the display generated on the TV includes information relating to program next to be shown on said channel. In addition, same motivation is used as rejection to claim 28.

Regarding **claim 32,** "the television apparatus wherein said first function includes updating said currently displayed banner with new information based on said updated program guide" Gerba discloses (¶0179, ¶0187) that the banner information is updated with the information using the IPG data. In addition, same motivation is used as rejection to claim 28.

Regarding **claim 35,** "a television apparatus" reads on the method that provides program guide to the user television equipment (abstract) disclosed by Knudson and represented in Fig. 1.

As to "comprising: a tuner operative to tune a channel" Knudson discloses (col.9, lines 39-42) that the user tunes to a channel.

As to "an input operative to receive an updated program guide from a broadcaster while said channel is tuned, wherein said updated program guide is provided from said broadcaster without being requested by said television apparatus" Knudson discloses (col.2, lines 44-56; col.13, lines 17-48) that the database at television equipment receives program listing data, where when live event data and updated program listings information is received in real-time at television equipment from the distribution facility; the television equipment uses the updated program listing data to update the database and displays the updated programming guide data as represented in Figs. 11 and 12.

As to "controller operative to determine if a banner advertising a future program on said channel is currently displayed while said channel is tuned in response to reception of said updated program guide" Knudson discloses (col.1, lines 33-35; col.8, line 39-col.9, line 37) that the receiving device receives real time data (updated program guide) from the data source, which is used to display real time data on sports scores with the EPG data, where the guide continually display up-to-the-minute scores with the program listings in real time as represented in Fig. 3.

Knudson meets all the limitations of the claim except "controller operative to determine if a banner advertising a future program on said channel is currently displayed while said channel is tuned." However, However, Gerba discloses (¶0187) that the determination is made whether the banner is displayed as represented in Fig. 32A (element 952).

As to "wherein: if said controller determines that said banner is currently displayed while said channel is tuned, a first function is performed while said channel is tuned" Gerba discloses (¶0187) that the information in the banner is updated if the banner is already displayed as represented in Fig. 32A (element 954).

As to "if said controller determines that said banner is not currently displayed while said channel is tuned, a second function different from said first function is performed while said channel is tuned" Gerba discloses (¶0187) that if the banner is not displayed, then the device displays banner on the screen as represented in Fig. 32A (element 956). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson's system by displaying and updating banner as taught by Gerba in order to provide with the latest information on the programming.

Combination of Knudson and Gerba meets all the limitations of the claim except "banner advertising a future program." However, Mountain discloses (¶0023) that based on the EPG data received, the receiver generates a small display on TV indicating start of next program with program information as

represented in Figs. 2A-2C. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson and Gerba's systems by displaying banner advertising future program as taught by Mountain so the viewer can know the future programming information without having to find out manually.

Regarding **claim 37,** "the television apparatus wherein said banner includes at least one of: a title of said future program, a starting time of said future program, and a duration of said future program" Mountain discloses (¶0023) that the displaying information provided includes the program title, start time, channel number, etc. as represented in Figs. 2A-2C. In addition, same motivation is used as rejection to claim 35.

Regarding **claim 38,** "the television apparatus wherein said first function includes updating said currently displayed banner with new information based on said updated program guide" Gerba discloses (¶0179, ¶0187) that the banner information is updated with the information using the IPG data. In addition, same motivation is used as rejection to claim 35.

8. **Claims 22, 29, and 36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Gerba and Mountain as applied to claims 21, 28,

and 35 above, and further in view of US PG Pub 2004/0078817 to Horowitz et al (hereafter referenced as Horowitz).

Regarding **claim 22,** combination of Knudson, Gerba and Mountain meets all the limitations of the claim except "the method further comprising a step of requesting said updating program guide from said braodcaster a predetermined time period before a detected end time of a currently tuned program." However, Horowitz discloses (¶0036 and claim 22) that the query to update EPG data is transmitted immediately prior to the end of scheduled program time. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba and Mountain's systems by transmitting updated EPG to STB at predetermined time before the program begins as taught by Horowitz in order to view/record programs at the updated time so viewers do not miss any portions of the program (¶0004).

Regarding **claim 29,** combination of Knudson, Gerba and Mountain meets all the limitations of the claim except "the television apparatus further comprising means for requesting said updated program guide from said broadcaster a predetermined time period before a detected end time of a currently tuned program on said channel." However, Horowitz discloses (¶0036 and claim 22) that the query to update EPG data is transmitted immediately prior to the end of scheduled program time. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba

and Mountain's systems by transmitting updated EPG to STB at predetermined time before the program begins as taught by Horowitz in order to view/record programs at the updated time so viewers do not miss any portions of the program (¶0004).

Regarding **claim 36,** combination of Knudson, Gerba and Mountain meets all the limitations of the claim except "the television apparatus further comprising means for requesting said updated program guide from said broadcaster a predetermined time period before a detected end time of a currently tuned program on said channel." However, Horowitz discloses (¶0036 and claim 22) that the query to update EPG data is transmitted immediately prior to the end of scheduled program time. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba and Mountain's systems by transmitting updated EPG to STB at predetermined time before the program begins as taught by Horowitz in order to view/record programs at the updated time so viewers do not miss any portions of the program (¶0004).

9. **Claims 26, 33, 34, 39 and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Mountain, Gerba and Horowitz as applied to claims 22, 29, and 36 above, and further in view of US Patent 6,396,531 to Gerszberg (hereafter referenced as Gerszberg).

Regarding **claim 26,** combination of Knudson, Gerba, Mountain, and Horowitz meets all the limitations of the claim except "the method wherein said predetermined time period is selected by a user of said television apparatus." However, Gerszberg discloses (col.28, lines 49-58; col.29, lines 40- 41) that by clicking on user profile icon, user is presented with options with input means for inputting information, such as to a user specified schedule. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba, Mountain, and Horowitz's systems by on-screen menu to set the predetermined time as taught by Gerszberg in order to allow users to gain access to latest program information (col.2, lines 34-35).

Regarding **claim 33,** combination of Knudson, Gerba, Mountain, and Horowitz meets all the limitations of the claim except "the television apparatus wherein said predetermined time period is selected by a user of said television apparatus." However, Gerszberg discloses (col.28, lines 49-58; col.29, lines 40-41) that by clicking on user profile icon, user is presented with options with input means for inputting information, such as to a user specified schedule. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba, Mountain, and Horowitz's systems by on-screen menu to set the predetermined time as taught by Gerszberg in order to allow users to gain access to latest program information (col.2, lines 34-35).

Regarding **claim 34,** "the television apparatus, wherein said second function includes enabling display of said banner based on said updated program guide" Gerba discloses (¶0179, ¶0187) that if the banner information is not displayed, then the banner information is displaying on the screen using the IPG data. In addition, same motivation is used as rejection to claim 33.

Regarding **claim 39,** combination of Knudson, Gerba, Mountain, and Horowitz meets all the limitations of the claim except "the television apparatus wherein said predetermined time period is selected by a user of said television apparatus." However, Gerszberg discloses (col.28, lines 49-58; col.29, lines 40-41) that by clicking on user profile icon, user is presented with options with input means for inputting information, such as to a user specified schedule. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Knudson, Gerba, Mountain, and Horowitz's systems by on-screen menu to set the predetermined time as taught by Gerszberg in order to allow users to gain access to latest program information (col.2, lines 34-35).

Regarding **claim 40,** "the television apparatus wherein said second function includes enabling display of said banner based on said updated program guide" Gerba discloses (¶0179, ¶0187) that if the banner information is not displayed, then the banner information is displaying on the screen using the IPG data. In addition, same motivation is used as rejection to claim 35.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent 7,266,835 to Halbert
- US PG Pub 2002/0040482 to Sextro

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pinkal R. Chokshi whose telephone number is (571) 270-3317. The examiner can normally be reached on Monday-Friday 8 - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on 571-272-7527. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian T Pendleton/
Supervisory Patent Examiner, Art Unit 2425

/Pinkal R. Chokshi/
Examiner, Art Unit 2425